82-2104

No._____

IN THE

Supreme Court of the United States

October Term, 1983

FREDERICK J. GRACE,
Petitioner,
vs.
WESTERN CONTRACTING CORPORATION,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MICHIGAN

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ARGUMENT

The goal of Admiralty jurisdiction is one of uniformity to insure that all parties will receive equal treatment in all jurisdictions and in all forums. *Southern Pacific Co.* v. *Jenson*, 244 U.S. 205, 37 S.Ct. 470 (1916). This is particularly true with respect to the Jones Act which is to be given a "uniform application throughout the country unaffected by local views of common law rules." *Garrett* v. *Moore-McCormick Co.*, 317 U.S. 239, 244, 63 S.Ct. 246, 250 (1942). Thus, the remedy provided by F.E.L.A. is exclusive and supersedes all state laws covering the same

area. Further, an award of damages and "accrued interest presents a question of substantive law." *Louisiana & Arkansas Ry. Co.* v. *Pratt*, 142 F.2d 847, 848 (5th Cir. 1944). This uniform application of right and remedies afforded a seaman insures equal treatment in all forums and thus discourages forum shopping.[1]

It is precisely this attempt to maintain uniformity of treatment of all seamen which has led the Michigan Courts to continuously deny seamen the prejudgment interest provided for in MICH. COMP. LAWS § 600.6013 (1980) (MICH. STAT. ANN. § 27A.6013 (Callaghan 1977)).[2] In each decision the respective panels of the Michigan Court of Appeals correctly looked to federal substantive law and not Michigan law as the basis for its ruling.

The uniformity of application of federal substantive law has also been the basis for courts in other jurisdictions to deny prejudgment interest to a Jones Act seaman. In *Moore-McCormack Lines, Inc.* v. *Amirault*, 202 F.2d 893 (1st Cir. 1953), the court set forth the general proposition that:

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[1] The instant matter presents a classic case of forum shopping. The plaintiff, a New Jersey resident, instituted this action in Michigan against a Florida corporation to recover damages for injuries sustained as a result of an accident in navigable waters in and around Tampa Bay, Florida. The only connection with Michigan was the fact that Western Contracting, at the time the suit was filed, maintained offices in Michigan.

[2] *Shemman* v. *American Steamship Company*, 89 Mich App 656 (1979); *Reetz* v. *Kinsman Marine Transit Company*, Court of Appeals No. 78-156 (September 10, 1979); *Grace* v. *Western Contracting Corporation*, Court of Appeals No. 55302 (March 27, 1981); *Ahmed* v. *American Steamship Company*, Court of Appeals No. 62445, a fourth panel of this Court refused to grant leave to the plaintiff to review a lower court's denial of prejudgment interest. The order of this Court based its decision on *Shemman*, *supra*.

> [b]ut this is not a "typical diversity case" under which federal district court sitting in Massachusetts would be obliged to apply the local substantive law of Massachusetts in accordance with *Erie Ry. Co.* v. *Tompkins*, 1938, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188, and *Klaxon Co.* v. *Stentor Electric Mfg. Co., Inc.*, 1941, 313 U.S. 486, 61 S.Ct. 1020, 85 L.Ed. 1477. The claims sued on here were not based upon Massachusetts law, but were for maritime torts. It is well settled that by force of the Constitution itself, *when a common law action is brought, whether in a state or in a federal court, to enforce a cause of action cognizable in admiralty, the substantive law to be applied is the same as would be applied in admiralty court – that is the general maritime law*, as developed and declared, in the last analysis by the Supreme Court of the United States, or as modified from time to time by Act of Congress. (citation omitted) . . . . But whether such diversity existed or not, it is still true that the substantive law to be applied in determining both liability and the amount of damages to be embodied in the money judgment is federal law, not state law. . . . Furthermore, even if the action had been brought in a Massachusetts state court, the substantive law to be applied would still be federal law. (citation omitted) (emphasis added) 202 F.2d at 896-97.

In *Louisiana & Arkansas Ry. Co.* v. *Pratt*, *supra*, the Fifth Circuit also looked to federal substantive law on the issue of the propriety of awarding prejudgment interest despite the fact that a Louisiana Statute provided for prejudgment interest in civil actions. The court concluded that the F.E.L.A. "supersedes" the Louisiana Statutes, 142 F.2d at 849, and as such refused to award the plaintiff prejudgment interest.

In *Canova* v. *Employers Mut. Liability Ins. Co. of Wisc.*, 301 F.Supp 738 (E.D. La. 1967), aff'd. *sub nom. Canova* v. *Travelers Ins. Co.*, 406 F.2d 410 (5th Cir. 1969), a barge worker commenced two suits, one a Jones Act case against his employer and the other an action under the Louisiana Direct Action Statute against the insurers of the owners of a crane. Both cases were consolidated and tried before a jury. As to the Jones Act defendant, the district court held that no prejudgment interest could be awarded:

> [a]s to the Jones Act defendants (California Company and American Insurance Company) it is the Court's view that no prejudgment interest may be allowed. This conclusion is supported by *Louisiana & Arkansas Ry. Co.* v. *Pratt*, 142 F.2d 847 (5th Cir. 1944), wherein the court held that under the F.E.L.A. (to which the Jones Act is an amendment) interest was not properly allowable from the date of judicial demand, notwithstanding the statute of Louisiana to the contrary. (citations omitted). 301 F.Supp at 739.

Significantly, the ruling as to the unavailability of prejudgment interest in a Jones Act case tried to a jury was not even appealed. The only issue on appeal turned on whether the General Maritime Law or Louisiana Law would govern prejudgment interest vis-à-vis the non-Jones Act defendant, and as to that defendant it was held that:

> [t]he cause of action arose on navigable waters and the case was litigated under the Maritime Law. The trial judge was therefore correct in looking to that *same body of substantive law* to determine the propriety of awarding interest before judgment. (emphasis added). 406 F.2d at 412.

In *Sanford Bros. Boats, Inc.* v. *Vidrine*, 412 F.2d 958 (5th Cir. 1969), the Fifth Circuit held it to be error to award prejudgment interest:

> [w]e consider next the issue of prejudgment interest. The district court in entering judgment for plaintiff awarded interest on the judgment from the date of judicial demand. This was error. The instant case was tried to a jury (citations omitted). While prejudgment interest has been deemed appropriate in Jones Act cases tried in Admiralty, (citations omitted) the courts have uniformly held that prejudgment interest is not available in FELA cases and Jones Act cases tried at law. (citations omitted) 412 F.2d at 972.

Finally, in *Barton* v. *Zapata Offshore Company*, 397 F.Supp 778 (E.D. La. 1975), cited by the Michigan Court of Appeals in its ruling on the instant matter, the court was confronted with the plaintiff's assertion that he was entitled to prejudgment interest, if not for his Jones Act claim, then certainly under the general Admiralty and Maritime Law. In response to his contention, the *Barton* court noted:

> [t]here might be merit to this analysis if either the jury had denied recovery under the Jones Act and found unseaworthiness, or if there were some element of admiralty damage not allowable under the Jones Act. But here the verdict found the employer liable under the Jones Act as well as the general maritime law; the elements and amounts of damage claimed were identical. If the court may not award prejudgment interest on the Jones Act claim, there is no separate 'pure' admiralty item on which to allow interest. Furthermore, the reason given by the court in *Moore-McCormack Lines, Inc.* v. *Richardson, supra*, for denying a right

> to prejudgment interest in jury-tried Jones Act cases — that jury considers the delay in making an award — would apply with equal force to a jury-tried unseaworthiness claim. In sum, the plaintiff may not claim the benefits of a jury trial on an unseaworthiness claim completely merged with a Jones Act claim as to quantum and then attempt to unscramble the verdict after he prevails. 387 F.Supp at 780.

Petitioner tried this action at law to a jury on the theory of negligence under the Jones Act and unseaworthiness under the General Maritime Law.[3] In such a situation, the law in Michigan and throughout the United States unanimously sets forth that there is no entitlement to prejudgment interest as a matter of substantive Federal Maritime Law.

Petitioner's assault on this well-settled rule of Federal Maritime Law is grounded solely upon a decision of the Michigan Supreme Court which did not even concern the Maritime Law. In *Ballog* v. *Knight Newspapers, Inc.*, 381 Mich. 527, 164 N.W.2d 19 (1969), the Michigan Supreme Court was confronted with the question of whether a 1965 amendment to MICH. COMP. LAWS § 600.6013 (1980) (MICH. STAT. ANN. § 27A.6013 (Callaghan 1977)) should be retroactively applied to a common law tort case governed exclusively by Michigan law. As the *Ballog* court stated, the only issue therein was purely one of legislative intent. *Id* at 541.

In *this* matter, the only issue is one of federal preemption of the question of prejudgment interest in Jones Act cases tried at law to a jury and the uniformity of Federal Maritime Law. That the Supreme Court of the

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[3] In the instant matter, a general verdict was entered in favor of the plaintiff for $275,000.00. There was no breakdown by the jury on the question of liability under the Jones Act versus liability under the General Maritime Law.

State of Michigan held in *Ballog* that under Michigan law prejudgment interest was considered to be "related to remedies and modes of procedure" rather than "substantive" (at least insofar as the issue of retroactive application of the statute was concerned) does not detract from the fact that under the governing law of this case, as has been uniformly recognized, "[t]he allowance of interest on such judgments is a matter of federal substantive law." *Shemman, supra,* at 677.

Beyond the question of federal supremacy in resolving the procedural/substantive dichotomy, lies an even more basic flaw in Petitioner's argument. The central theme of *Ballog* was whether the legislature intended MICH. COMP. LAWS § 600.6013 (1980) (MICH. STAT. ANN. § 27A.6013 (Callaghan 1977)) to be applied retroactively in circumstances where the authority of the Michigan lawmakers to formulate such rule was clear and unchallenged. In this case, Petitioner would have this Court infer that by enacting M.C.L. 600.6013, the Michigan legislators intended to grant Jones Act seamen suing in Michigan courts a heretofore unknown right to prejudgment interest.

As was earlier noted, this Court has long recognized that a state court may not apply a local rule of decision in derogation of substantive Federal Maritime Law simply because in that state the local rule may be considered merely remedial or procedural. *Garrett* v. *Moore-McCormack Co.*, 317 U.S. 239, 63 S.Ct. 246 (1942).

Contrary to the situation in *Ballog*, it is clear that the Michigan legislature had no authority to expand or contract the rights granted to seamen by Congress in the Jones Act, even had it so desired. The principle that "state legislation is clearly invalid where it actually conflicts with the established General Maritime Law or federal statutes" was referred to by Gilmore and Black in *The Law of Admiralty* (2d ed. 1975), at page 48,

as so firmly established as to be a "constitutional truism." Thus, since the Michigan legislature could not have enacted a statute specifically granting prejudgment interest to Jones Act suitors, it strains all reason and logic to suppose that it could have accomplished the same result in a non-specific, general statute, or that it ever even intended such a result.

Finally, Petitioner's Fourteenth Amendment argument that the denial of prejudgment interest to Jones Act seamen under M.C.L. 600.6013 creates a disparity of treatment among individuals similarly situated is wholly without merit. It should be initially noted that seamen have long been treated differently than other litigants. See *Mannich* v. *Southern S.S. Co.*, 321 U.S. 96, 103-104, 64 S.Ct. 455, 459 (1944). Further, the mere difference in the application of a law does not, of itself, constitute a violation of the Equal Protection Clause. This Court has consistently held that:

> [m]any times that 'invidious' distinctions cannot be enacted without a violation of the Equal Protection Clause. In determining whether or not a state law violates the Equal Protection Clause, we must consider the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification. *Williams* v. *Rhodes*, 393 U.S. 23, 30, 89 S.Ct. 5, 10 (1968)

Michigan's application of prejudgment interest, rather than creating disparate treatment among litigants, insures and promotes the uniform treatment of all Jones Act seamen throughout the United States.

CONCLUSION

Michigan courts have consistently interpreted Michigan's prejudgment interest statute in conformity with prevailing federal case law in order to insure the uniform application of the Jones Act to all seamen irrespective of the forum in which the litigation is instituted. The interpretation of the Michigan statute is peculiarly within the purview of the Michigan courts and does not present a question for review by this Court. Respondent would therefore request this Court to deny the Petition for Writ of Certiorari to the Supreme Court of Michigan.

Respectfully submitted,

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Dated: July 20, 1983

APPENDIX OF ORDERS, OPINIONS, AND UNPUBLISHED DECISION

[UNPUBLISHED OPINION OF MICHIGAN COURT OF APPEALS IN *AHMED* v *AMERICAN STEAMSHIP COMPANY*, COURT OF APPEALS NO. 62445 DATED AND FILED MAY 4, 1982]

(State of Michigan — Court of Appeals)

(Sultan S. Ahmed, Plaintiff-Appellant, vs. American Steamship Co., Defendant-Appellee — No. 62445)

Before: D.C. Riley, P.J. and V.J. Brennan and N.J. Kaufmann JJ.

In this cause a delayed application for leave to appeal is filed by plaintiff-appellant, and an answer in opposition thereto having been filed, and due consideration thereof having been had by the Court,

IT IS ORDERED that the application be, and the same is hereby DENIED for lack of merit in the grounds presented. See, *Shemman* v *American Steamship Co.*, 89 Mich App 656, 676-677 (1979).